IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 1039 of 2007

DATE OF DECISION: 22.1.2007.

Naveen Mandhan and others ....Petitioners

Versus

Kurukshetra University and another ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Adarsh Jain, Advocate
for the petitioner.

J.S. Khehar, J.

All the three petitioners herein gained admission to the 4-Year Bachelor of Technology course in Engineering at the Shri Krishan Institute of Engineering and Technology, Kurukshetra, commencing in the years 2001 and 2002. During the pursuit of the aforesaid course, wherein examinations are held semester-wise, the petitioners could not clear all the papers and were required to reappear in one or the other of the papers.

At the time of admission to the Engineering Course, which is regulated by the Ordinance issued under the Kurukshetra University Act, students were permitted to appear in any paper, of any semester, every six months. The aforesaid right of the petitioners was allegedly vested in them through clause 3(b) of the Ordinance issued under the Kurukshetra

University Act. The grievance of the petitioners is against the notification dated 18.6.2003 (Annexure P-1) issued by the Controller of Examinations, Kurukshetra University, Kurukshetra, whereby clause 3(b) of the earlier Ordinance (which was applicable at the time of the admission of the petitioners to the Bachelor of Technology Course) was amended, whereby henceforth examinations in each semester were to be held only, of odd semesters and even semesters, in alternative semesters. The effect of the aforesaid amendment was that the petitioners could reappear for the papers of the odd semesters in December/January and the papers of the even semesters in May/June. In sum and substance, the effect of the aforesaid amendment was that the earlier opportunity available to the petitioners, to appear in the reappear papers after every six months, was taken away, inasmuch as, the petitioners after the amendment can appear for reappearing in a paper only once in a year.

The solitary contention of the learned counsel for the petitioners is that the Ordinance, as it existed at the time of admission of the petitioners to the Bachelor of Technology course, should regulate the aforesaid course till they complete the said course. In fact, it is the contention of the learned counsel for the petitioners that the amendment effected through the notification dated 18.6.2003 (Annexure P-1) retrospectively alters the conditions of admission of the petitioners to the course, to which they were admitted.

The pointed issue canvassed by the learned counsel for the petitioners stands adjudicated upon by the Apex Court in Punjab University V. Subash Chander and another, AIR 1984 Supreme Court

1414, wherein the Apex Court, while not agreeing with the judgment rendered by a Full Bench of this Court, observed as under:-

> " We do not agree with the learned Judges of the Full Bench of the High Court that there is any element of retrospectivity in the change brought about by the addition of the exception to R. 2.1 of the Calendar for the year 1970. "Retrospective" according to the Shorter Oxford English Dictionary, Third Edition, in relation to Statutes etc. means "Operative with regard to past time". The change brought about by the addition of the exception to Rule 2.1 does not say that it shall be operative with effect from any earlier date. It is obviously prospective . It is not possible to hold that it is retrospective in operation merely because though introduced in 1970 it was applied to Subash Chander, respondent 1, who appeared for the final examination in 1974, after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course. In the Calendar for 1979 we find the following at page 1:-
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> "Notwithstanding the integrated nature of a course

> spread over more than one academic year, the regulations in force at the time a student joins a course shall hold good only for the examinations held during or at the end of the academic year. Nothing in these regulations shall be deemed to debar the University from amending the regulations subsequently and the amended regulations, if any, shall apply to all students whether old or new."
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> This is as it should be, though there was no such provision in the Calendar of 1965 when Subash Chander was admitted to the course. It is admitted that it was introduced only in 1971. The absence of such a provision in the Calendar of 1965 is of no consequence."

The Apex Court, while recording the aforesaid observations in Punjab University's case (supra) relied upon an earlier decision rendered by it in B.N. Mishra V. State, AIR 1965 Supreme Court 1567, wherein it observed as under:-

> " The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age fo retirement would be 55 years. It would therefore apply from that date to all Government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all Government

servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the proviso which lays down that Government servants who had attained the age of 55 years on or before June 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. Further the second order issued on the same day also clearly shows that there was no retrospective operation of the rule, for in actual effect no Government servant was retired before the date of new rule i.e. May 25, 1961 and all of them were continued in service up to December 31, 1961 and were therefore to retire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The

new rule therefore, cannot be struck down on the ground that it is retrospective in operation."

In view of the decision rendered by the Apex Court in Punjab University's case (supra), as well as, in B.N. Mishra's case (supra), the solitary contention advanced by the learned counsel for the petitioners, cannot be accepted.

The instant writ petition is, accordingly, dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

January 22, 2007.
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